

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
NORTHEASTERN DIVISION**

ROGERS GROUP, INC.,

Plaintiff,

v.

**Civil Action No.
5:09-CV-990-IPJ**

**THE LIMESTONE COUNTY
COMMISSION OF LIMESTONE
COUNTY, ALABAMA,**

Defendant.

JUDGMENT

This matter was heard in open court on April 20 and 21, 2010. Having considered the facts stipulated by the parties and adduced in open court and on the record, and the exhibits submitted by the parties, the court finds as follows:

Rogers Group, Inc. (“Rogers Group”) leased the property at issue in this case on August 16, 2007, from Frances Susan W. Bateman “to explore for minerals,” Limestone County’s Stipulations, ¶ 2; Plaintiff’s Exhibit (“Pl. Ex.”) 1A, and renewed the lease on February 16, 2009. Pl. Ex. 1B. On February 10, 2009, the Alabama Department of Environmental Management (“ADEM”) issued a National Pollutant Discharge Elimination System permit and an Air Quality permit for the operation of a quarry at the “South Limestone Quarry.” Limestone

County's Stipulations, ¶ 14; Pl. Ex. 49. On February 27, 2009, Limestone County, Alabama issued a business license to Rogers Group, allowing Rogers Group to operate a lawful business at the site in question. Limestone County's Stipulations, ¶¶ 6, 20; Pl. Ex. 42. Limestone County, Alabama renewed the license on October 14, 2009; the license remains effective until September 30, 2010. Pl. Ex. 43.

Prior to May 11, 2009, no zoning ordinance or any other law prohibited the operation of a quarry at the site in question. Limestone County's Stipulations, ¶¶ 4, 21. On May 11, 2009, the state of Alabama enacted Alabama Acts 2009-462, 2009-463, 2009-464, and 2009-465, which prohibit any new rock quarry from being established after May 11, 2009, or any existing rock quarry from being relocated outside the corporate limits of any municipality within two and one-half miles of the Robotics Center at Calhoun Community College, within two and one-half miles of a public school, within one mile of the TVA Industrial Development Mega Site, or within ten miles of Browns Ferry Nuclear Plant.

Prior to May 11, 2009, Rogers Group stripped topsoil at the property at issue, Limestone County's Stipulations, ¶¶ 24, 25; drilled the mineral deposit to enable loading it with explosives, *id.* at ¶ 26; blasted stone, *id.* at ¶ 27; extracted stone, *id.* at ¶ 28; crushed stone, *id.* at ¶ 30; and sold stone to third parties, *id.* at, ¶ 32. Rogers Group sold dirt from the property in question on May 4, 2010, sold crusher run from the property in question on May 5, 2009, and sold shot rock from

the property in question on May 6, 2009. Pl. Ex. 39; Roger's Group's Stipulations, ¶ 34.

ADEM has defined "surface mining" in the Alabama Administrative Code as "all or any part of the process of recovering coal, lignite, iron, clay, sand, bauxite, gravel, ores, gold, marble, or any other material or mineral by removal of such mineral from the surface or by removal or displacement of the strata or material which overlies such mineral deposits in its natural condition, and shall include but not be limited to the open-pit or open-cut method. . ." ALA. ADMIN. CODE § 335-6-9-.02. Further, "pit" is defined as "any tract of land from which overburden has been or is being removed for the purpose of surface mining." *Id.* No expert challenged ADEM's definition of surface mining or the fact that surface mining occurs when "all or any part of the process" described in the code begins.

Considering the definition provided by Alabama law and the facts presented to the court by the parties, the court finds that Rogers Group engaged in surface mining and a quarry was operating prior to May 11, 2009 at the property at issue. Accordingly, plaintiff's South Limestone County Quarry is exempt from Alabama Acts 2009-462, 2009-463, 2009-464, and 2009-465.

It is hereby **ORDERED, ADJUDGED, and DECREED** that judgment is entered in favor of plaintiff Roger's Group, Inc. and against defendant Limestone County Commission of Limestone County, Alabama, the court specifically finding

that plaintiff had established a quarry at its South Limestone County site prior to May 11, 2009.

DONE and **ORDERED**, this the 23rd day of April, 2010.



INGE PRYTZ JOHNSON
U.S. DISTRICT JUDGE